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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,771	02/05/2002	Charles Eldering	T742-10	7576

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TECHNOLOGY, PATENTS AND LICENSING, INC./PRIME
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EXAMINER	
HUYNH, SON P	

ART UNIT	PAPER NUMBER
2623	

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/068,771	**Applicant(s)** ELDERING ET AL.	
	Examiner Son P. Huynh	**Art Unit** 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *04* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *194,197-200,202 and 213-233*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues Unger teaches that an alternative ad or static image "replaces" the fast forward ad. As such, the alternative advertisement and the fast forwarded advertisement cannot be simultaneously presented. (page 1, last paragraph, page 7, last paragraph).

In response, this argument is respectfully traversed. Unger discloses the alternative advertisement is condensed version the ad being fast- forwarded (see including, but is not limited to, col. 3, lines 1-15). When a fast forward command is received, the condensed version of the advertisement being fast forwarded is presented (see including, but are not limited to, col. 3, lines 9-15, col. 6, lines 1-8, lines 25-53). Thus, the limitation "the alternative advertisement and the fast-forwarded or skipped targeted advertisement are simultaneously presented" is broadly read on displaying the tagged frame/condensed version of the advertisement that contains portion/content of both the alternative advertisement and the advertisement being fast-forwarded on the screen.

Applicant further argues Chang cannot teach simultaneously displaying a fast-forwarded ad with an alternative ad... Chang does not teach or suggest displaying an "alternative advertisement for a product or service directly related to the product or service... (page 4, paragraphs 2-3, page 7, last paragraph).

In response, this argument is respectfully traversed. the limitation of simultaneously displaying a fast forwarded ad with the alternative ad" is taught by Unger as discussed above. Unger further discloses the alternative ad is a tagged image or condensed version of the ad being fast-forwarded (see including, but is not limited to, col. 3, lines 1-15). Thus, Unger discloses an alternative advertisement (tagged frame or condensed version of the ad being fast-forwarded) directly related to the product or service (ad being fast-forwarded). The examiner relies on Chang for the teaching of displaying the alternative ad is presented as a partial screen display in conjunction with the targeted advertisement (alternative commercial 604, 606 is presented in a smaller window with the main commercial being played - paragraphs 0057-0058, figure 6). Change also disclose simultaneously displaying alternative ad and targeted ad to the user (paragraphs 57-58, figure 6).

In response to applicant's conclusion the proposed combination fails to teach that "the alternative advertisement and the fast forwarded or skipped targeted advertisement are simultaneously presented"; and that the simultaneously display advertisements are "directly related" (bridge paragraph between page 4 and page 5), the Examiner respectfully disagrees. The examiner interprets this limitations are met with Unger's disclosure as discussed above.

In response to applicant's argument that there is no suggestion/motivation to combine the references(page 5, paragraph 2-page 7, paragraph 3), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the obviousness/motivation is found in the reference themselves and also in the knowledge generally available to one of ordinary skill in the art. Specifically, Hendricks discloses providing advertisement with video program. Hendricks also discloses displaying alternative advertisement (see include, but is not limited to, col. 26, lines 14-30). Unger also discloses providing advertisement with video program and displaying alternative advertisement (see including, but is not limited to, col. 2, lines 45-60). In addition to Hendericks' disclosure, Unger also discloses the alternative advertisement is for a product or service directly related to the product or service of the targeted advertisement (e.g. tagged frames of alternative advertisement is a condensed version of the advertisement being fast-forwarded - col. 2, lines 45-60); and the alternative advertisement and the fast-forwarded advertisement are simultaneously presented to the subscriber broadly interpreted as present to the subscriber the tagged frame(s) that contains portion/content of both alternative advertisement and fast forwarded advertisement when the fast forwarded command is detected (see including, but is not limited to, col. 2, lines 45-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks to use the teaching as taught by Unger in order to minimize the interruption to the programming caused by interspersed commercial message, while protecting the broadcast's source of revenue by providing the advertiser with a means of reaching potential customer with, at least, an abbreviated advertisement message (col. 2, lines 35-42).

Chang also discloses providing advertisement with video program and displaying alternative advertisement (see including, but are not limited to, figures 1, 6, paragraphs 0010-0011, 0057-0058). Chang also disclose simultaneously present alternative commercial (604, 606) and the targeted commercial (main commercial) - figures 5-6. In addition to Hendricks and Unger, Chang further discloses alternative advertisement is presented as a partial screen display in conjunction with the targeted advertisement (alternative commercial 604,606 is presented in a smaller windows with the main commercial being played - paragraphs 0057-0058, figure 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks in view of Unger to use the teaching as taught by Chang in order to improve convenience to users (since the user viewer two commercials on two portion of the screen at the same time); and thereby to provide a way to more efficiently tailor television commercials to viewers to heighten viewer interest in the commercial shown (paragraph 0007). Therefore, the combination of Hendricks, Unger, and Chang is proper.

For the reasons given above, the examiner maintains the rejections on the claims as discussed in the Final Office Action mailed on 02/04/2006.